

The question of whether retailers incur Retailers' Occupation Tax liability with respect to discount coupons depends on whether those retailers are being reimbursed for all or a part of the amount represented by the coupon. See 86 Ill. Adm. Code 130.2125. (This is a GIL.)

January 3, 2001

Dear Xxxxx:

This letter is in response to your letter dated September 7, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be accessed at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

We would like to request a General Information Letter pursuant to Section 1200.120(b) and (c) on the Illinois Retailers' Occupation Tax (hereinafter 'ROT') and use tax implications of product sold in connection with the PROGRAM.

Facts

COMPANY, is a bottler and distributor of soft drinks, ades, teas and fruit juices in the State of Illinois. COMPANY's business consists primarily of wholesale sales and vending machine sales of bottled and canned beverages, as well as fountain drink mix sales.

As a normal matter of practice, many different promotions and marketing initiatives are introduced or offered to our customers as a result of combined efforts with COMPANY. One such marketing campaign that is in place is the PROGRAM.

The essential facts pertaining to the PROGRAM are as follows:

- XXXX and COMPANY are providing to ultimate retail consumers of COMPANY products the opportunity to participate in the PROGRAM with the purchase of specially marked capped bottled products;
- The purchase of each bottle provides the customer with the opportunity to obtain additional COMPANY products at no extra charge if so indicated on the underside of the caps;
- Such caps may be redeemed by the winning consumer for free beverages at any participating retail dealer (e.g., grocery stores, convenience stores); and,

- Ultimately, the redeemed caps are collected by the participating retailers and turned into their COMPANY sales representative for inventory replacement.

The invoicing or transactional flow that occurs between COMPANY and the participating retailers pursuant to this PROGRAM transpires in one of two different scenarios as described below:

- 1) The caps are redeemed by the ultimate consumer and collected by the retailer. Periodically, the dealer returns those caps to their COMPANY sales representative. COMPANY then furnishes this retailer with like quantities of product based on the number of caps that were actually redeemed. Along with this additional product, COMPANY issues a separate invoice indicating the quantity of beverages that were provided to the retailer at no charge. This invoice shows the transfer of inventory but does not bill the retailer.
- 2) In the second scenario, the caps are still accumulated by the retailer and turned in to the COMPANY sales representative. However, instead of 'swapping out' like quantities of product and issuing a separate 'no charge' invoice for this transaction, COMPANY simply furnishes the retailer a credit memo against product previously purchased by the retailer. The amount of the credit memo corresponds with the number of caps redeemed and a purchase price adjustment is invoiced to reflect a reduction to their account.

Issue

Is the product exchanged for caps redeemed pursuant to our Company's PROGRAM subject to additional tax?

Conclusion

The PROGRAM caps merely represent premiums included in the original purchase price of the product. Thus, the only tax due is the tax charged on the original purchase price of the product. No additional tax is due when the cap is redeemed.

Discussion

Pursuant to Illinois 86Ill. Adm. Code Sec. 130.2160, '[p]ersons who sell tangible personal property to purchasers who transfer such property to others along with other tangible personal property or service for which a charge is made are selling tangible personal property to purchasers for purposes of resale and are not liable for Retailers' Occupation Tax when making such sales.' This is the exact situation that occurs when the ultimate consumer purchases our product from the retailer. The consumer is not only purchasing the soft drink but also the specially marked cap which may or may not entitle the consumer to an extra bottle in which case the cap would be swapped for an additional unit of product. Both the soft drink and the value of the cap are purchased and taxed at the same time based upon the price paid by the consumer for that product.

The timing of when the cap is swapped for the additional soft drink is of no relevance to the substance or taxability of the transaction. For instance, the purchaser of the 'capped' soft drink may open the product immediately and trade-out the cap for an additional soft drink during the same transaction without ever leaving the premise of the

retailer. On the other hand, the holder of the cap may choose to switch out the cap for the soft drink during a subsequent visit to the retailer. In either case, the essence of the transaction is that certain consumers receive two soft drinks for the price of one. In both instances, the transaction was completed when the original purchase of the soft drink(s) was made. The value of the cap did not change from the time of the original purchase to the subsequent exchange of the cap for the soft drink.

This can be further illustrated by the theater example found in Illinois 86Ill. Adm. Code Sec. 130.2160. The regulation states that the owner of theater does not owe the ROT on the purchase of prizes to theater patrons to whom a charge for attending the theater is made. Purchases of the prizes by the theater owner are considered purchases for resale and are exempt from the tax. The prizes that the customer or patron receives are, in essence, included in the original charge for attending the theater. Thus, based on the facts and discussion outlined above, we feel that PROGRAM caps represent premiums for which the retailer collects the retailers' occupation tax on the initial sale of the product to the ultimate consumer.

We respectfully request a letter ruling in response to this issue at your earliest convenience. If you have questions or require any additional information please feel free to contact me at #####.

Initially, we point out that the provision you cite about theaters is no longer part of the administrative regulations because the Department amended 86 Ill. Adm. Code 130.2160. An up-to-date copy of Section 130.2160 is enclosed for your consideration.

When retailers or other persons issue coupons, such as winning soft drink caps, which entitle the bearer to obtain an item of tangible personal property free of any charge whatever and not conditioned upon the purchase of other property, the furnishing of such tangible personal property does not constitute a sale under the Retailers' Occupation Tax and the retailers do not incur Retailers' Occupation Tax liability. See 86 Ill. Adm. Code 130.2125(c). However, retailers or other persons issuing such coupons, as donors, incur Use Tax liability on their cost price of the tangible personal property actually transferred as a result of such coupons.

Therefore, in situations such as those described in your letter, vendors who issue coupons are responsible for the Use Tax incurred as they are considered the donor of the item. Customers of retailers that redeem the coupons do not incur any tax liability. However, vendors sometimes request reimbursement of the tax from customers who receive the free item. This provision is generally included in the wording of the coupon.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Karl W. Betz
Associate Counsel

KWB:msk
Enc.